

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXX's.

April 21, 2003

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 21, 2002

Case Number: TSO-0008

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, based on the record before me, I am of the opinion that the individual should not be granted access authorization at this time.

I. Background

The individual has been an employee of a contractor at a DOE facility for about three years, and has not yet been granted a security clearance. After an investigation of the individual's background revealed concerns about the individual's use of alcohol, marijuana, and other drugs, and his failure to report either the extent of his use of marijuana or his treatment for alcohol abuse, personnel security officials (local security office) conducted a Personnel Security Interview (PSI) with the individual on January 30, 2002. Because the security concern remained unresolved after that PSI, the local security office requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The psychiatrist interviewed the individual on April 25, 2002, and thereafter issued an evaluation to the DOE, in which he opined that the individual suffered from "[a]lcohol dependence in stated partial remission." DOE Exhibit 8 at 3. The local security office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to the individual. Accordingly, the manager of the local DOE office obtained authority from the Director of the Office of Security to initiate an administrative review proceeding.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the local DOE office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, a DOE personnel security specialist, the DOE psychiatrist, the individual's brother, one of the individual's co-workers, a former co-worker, and a facility manager at the DOE site where the individual works. Counsel for the DOE submitted exhibits. I closed the record upon receiving the transcript of the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the legitimate security concerns raised have not been resolved, and that the individual should not be granted access authorization.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual

- (1) "has deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions (QNSP), a Personnel Qualification Statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sections 710.20 through 710.30" of the Part 710 regulations. *See* 10 C.F.R. § 710.8(f) [hereinafter Criterion F].
- (2) "has been[,] or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." *See* 10 C.F.R. § 710.8(j) [hereinafter Criterion J].
- (3) "trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the

Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine.” See 10 C.F.R. § 710.8(k) [hereinafter Criterion K].

The statements were based on the individual’s use of alcohol and the DOE Psychiatrist’s diagnosis of “[a]lcohol dependence in stated partial remission,” the individual’s past use of marijuana and other illegal drugs, and his failure to report both the extent of his use of marijuana and his treatment for alcohol abuse. DOE Exhibit 4 at 3-6.

When reliable information reasonably tends to “establish the validity and significance” of substantially derogatory information about an individual, a question is created as to the individual’s eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that granting him access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d).

1. Alcohol Use (Criterion J)

The following undisputed facts support a conclusion that the individual, although not currently abusing alcohol, has been a user of alcohol habitually to excess. In his January 30, 2002 PSI, the individual related that he sought treatment for his alcohol use in 1990 or 1991, and again in 1996 or 1997 (the individual stated in the interview that he was not sure as to the dates, and in fact records from his latter treatment indicate that it occurred from November 1997 to March 1998). DOE Exhibit 6 at 23, 18-19, 23-25; DOE Exhibit 12. Records from the facility at which his more recent treatment occurred state that the individual reported “binge drinking, about 10/12 drinks or 12 pack of beer . . . four days per week.” DOE Exhibit 12. Also in his PSI, the individual admitted that he was arrested for Driving Under the Influence in May of 1999. DOE Exhibit 6 at 13-14.

In addition, the individual was diagnosed by the DOE psychiatrist as suffering from alcohol dependence in stated partial remission. DOE Exhibit 8 at 3. The individual offers no competing expert opinion that disputes the DOE psychiatrist’s diagnosis. He did ask his brother, who had a drinking problem but has been abstinent for twenty years,

Q. In your opinion, would you say that I either have a drinking problem or that I am alcohol dependent?

A. Uh uh, not now. I think at one time you may have relied on it too much during your marriage and problems that you had. From frustration, I think you drank more than anything. But I have been around a lot of chemically dependent people in my lifetime, myself being one, but I have numerous numbers of these people where I work and, in my opinion, my brother does not exhibit the same type of behavior that those people do. They are very irrational in their decision making process. [The individual] has a tendency to be more exact and explicit about how he goes about things, and that is usually not

indicative of someone who has a chemical dependency problem. So I do not think you are an alcoholic.

Transcript of Hearing (Tr.) at 63-64.

The individual's brother may be right, in that the individual may not have a *current* problem with alcohol. But this does not necessarily conflict with the diagnosis of the DOE psychiatrist, who described the individual's alcohol dependence as being "in stated partial remission." DOE Exhibit 8 at 3. In any event, hearing officers normally accord great deference to the expert opinions of psychiatrists and other mental health professionals as to the diagnosis of a mental disorder. *See, e.g., Personnel Security Hearing, Case No. VSO-0498, 28 DOE ¶ 82,851 at 85,876 (2002)* ("the DOE Psychiatrist's diagnosis . . . must be given substantial weight"). Given this, and the lack of any expert opinion to the contrary, I have no reason to question the DOE psychiatrist's diagnosis.

Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability will be impaired to the point that he will fail to safeguard classified matter or special nuclear material. *E.g., Personnel Security Hearing, Case No. VSO-0479, 28 DOE ¶ 82,857 (2002).*

2. Illegal Drug Use (Criterion K)

The information in the Notification Letter regarding the individual's prior illegal drug use is not in dispute. Records from the facility at which the individual was treated in 1997 and 1998, discussed above, state that the individual reported marijuana use at a rate of "about 1/4th of an ounce per week . . . daily . . . last use about 1 year ago", as well as cocaine use of "about 3 grams per week . . . daily (off and on from 1978 to 1986) . . . last use 7 years ago." DOE Exhibit 12. During an interview conducted as part of the individual's background investigation, the individual stated that in July 1996 he failed a urine test because of marijuana use and lost a job as a result. DOE Exhibit 11. In his PSI, the individual admitted to past use of cocaine, methamphetamine, and LSD, and to regular marijuana use ("during the time I did it the most . . . a couple of joints a day") "off and on through most of my life, up until the point to where I had lost that job." Tr. at 31, 35, 39.

From a security standpoint, an individual's involvement with illegal drugs presents a problem because it demonstrates a disregard for laws prohibiting their use. In addition, an individual who uses illegal drugs opens himself to blackmail or other forms of coercion, because he may want to conceal his usage. Moreover, even if the individual is only an occasional user, while he is under the influence of drugs, his judgment is likely to be impaired, rendering him more susceptible to pressure, coercion, or exploitation.

3. Falsification (Criterion F)

In completing a Questionnaire for National Security Positions (QNSP) on March 5, 2001, the individual truthfully answered a question as to whether he had illegally used any controlled substance

in the last 7 years (i.e. since March 5, 1994). However, when the questionnaire required him to specify the number of times he had used any such drugs, he stated that his use was confined to a one-time use of marijuana in 1996. DOE Exhibit 10 (QNSP Question 24). As is clear from the discussion above regarding the individual's illegal drug use, this statement was false. In addition, on the same QNSP the individual answered "no" to the question, "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" As discussed above, the individual underwent treatment for his alcohol use from November 1997 to March 1998, only three years prior to his completion of the March 5, 2001 QNSP.

The individual's failure to respond honestly to these questions on the QNSP raises valid and significant concerns under Criterion F. *See, e.g., Personnel Security Review*, Case No. VSA-0371, 28 DOE ¶ 83,015 (2000) ("[T]he DOE security program is based on trust, and once an individual has breached that trust, a serious question arises as to whether that individual can be trusted to comply with the security regulations."). The individual himself recognized the importance of trust in his hearing testimony: "[I]t is really a matter of being able to trust someone. I mean, you are basically making a decision, can this person be trusted?" Tr. at 101.

Because the derogatory information set forth above, relating to Criteria F, J, and K, creates a question as to the individual's eligibility for access authorization, 10 C.F.R. § 710.9(a), the burden falls on the individual to convince the DOE that granting him access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 708 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). "In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

1. Alcohol Use (Criterion J)

Regarding the individual's use of alcohol, of the factors set forth in the regulations, the most pertinent ones appear to be the absence or presence of rehabilitation or reformation from his alcohol dependence and, in turn, the likelihood of recurrence of excessive use of alcohol. Thus, at the hearing, I asked the DOE psychiatrist if he could quantify what he saw as the risk of the individual relapsing into problem drinking. The DOE psychiatrist responded, "in terms of risk, I would say 7, maybe 8 . . . out of ten." Tr. at 55-56.

For his part, the individual presented no evidence that would challenge the psychiatrist's assessment of future risk. There was convincing testimony at the hearing on behalf of the individual that his use of alcohol has not recently been excessive and has not affected his job performance. His brother testified that he has "not seen any extensive use of alcohol" by the individual in the last five years, and that he had never seen him "drunk." Tr. at 60, 65. One of his current coworkers testified as follows:

Q. In the three years that you have known me, have you ever known me to come to work with alcohol or drugs present?

A. No.

Q. On my breath or in my vehicle? Or ever know me to miss any time due to illness from alcohol or anything like that?

A. No.

Tr. at 86-87; *see also* Tr. at 71 (former co-worker has never seen the individual with alcohol nor smelled it on him in the three years he has known him); Tr. at 80 (facility manager at his current place of work has never known the individual to be under the influence of alcohol or drugs); Tr. at 96-97 (individual testifies that he currently drinks "a couple of beers now and then").

However, the DOE psychiatrist is of the opinion that the individual should abstain entirely from using alcohol. "[T]he concern here is that, although the severity of his consumption of alcohol may not be like that in the past, his diagnosis likely holds and will continue to hold until such time as there is convincing evidence that he is both abstinent and sober over an extended period of time." Tr. at 38. Under these circumstances, I find that the individual's risk of returning to excessive use of alcohol remains too high, and that therefore the associated security risk has not been resolved.

2. Illegal Drug Use (Criterion K)

In contrast to the unresolved concerns raised by the individual's problems with alcohol, I find less ongoing concern remains regarding his past use of illegal drugs. While any prior illegal drug use rightly raises a security concern, I see no evidence in the present case that the individual's disregard for drug laws was indicative of a pattern in the individual's life of disregard for other laws, for the law in general, or in particular for any laws relating to national security. On the other hand, if the individual were to use illegal drugs in the future, the concerns discussed above regarding

susceptibility to coercion and effect on judgment would be raised anew. In addition, the use of illegal drugs while the individual holds a security clearance (if he were to be granted one) most certainly would not demonstrate good judgment.

I therefore must evaluate the likelihood that the individual will use illegal drugs in the future. I find this likelihood to be low. Unlike was the case with alcohol, the individual has not been diagnosed with dependence on any other drugs. Contrasting the risk of future use of illegal drugs with that of alcohol abuse, the DOE Psychiatrist testified, “that is at a much lower risk. It is always there because, again, you are looking at -- as I cited earlier, previously, a 25-year history of manifest drug abuse. That would be maybe a 3 to 4 [out of 10].”

Thus, though there is probably some remaining concern stemming from the possibility of the individual’s return to illegal drug use, this is clearly a lesser concern than that raised by the potential for excessive alcohol use, and pales in comparison to the serious unresolved concerns raised by the individual’s falsifications, which I discuss below.

3. Falsification (Criterion F)

In a number of opinions, DOE hearing officers have considered the implications of past falsifications by an individual.

All acknowledge the serious nature of falsifying documents. Beyond that, whether the individual came forward voluntarily to renounce his falsifications appears to be a critical factor. *Compare Personnel Security Hearing*, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA Feb. 22, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (falsification discovered by DOE security). Another important consideration is the timing of the falsification: the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual’s admission. *See Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing*, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use).

Personnel Security Hearing, Case No. VSO-0319, 27 DOE ¶ 82,851 (2000), *affirmed* (OSA July 18, 2000).

In the present case, the individual did not come forward to volunteer the fact that he provided false answers on the March, 5, 2001 QNSP. Moreover, the individual maintained those falsehoods for nearly one year, until he was called into his January 30, 2002 PSI. Then, only after the personnel security specialist told him there was “information about you using marijuana and cocaine in the past,” did the individual admit, “I wasn’t totally honest on my forms when I filled all of them out

about drug abuse.” DOE Exhibit 6 at 5, 19. And although the evidence in the record does not point to a pattern of falsification by the individual, it has been less than 15 months since the individual “came clean” with the DOE. Then he did so apparently only after it became clear that there was a discrepancy between his statements and those of others who were interviewed by investigators. DOE Exhibit 6 at 21 (“obviously, I don’t know, you spoke to people or maybe some of the places I went to, for whatever reason, you got information and I was kind of figuring that might happen anyway, but I really don’t have anything to hide”).

Given the context laid out above, it is difficult to have faith in the truth of the individual’s statements to the DOE, either in response to the other questions in the 2001 QNSP, or in the future. Simply too little time has passed since his falsifications were brought to light for me to conclude that the serious concerns raised by those false statements have been mitigated to any significant degree.

III. Conclusion

Primarily because of unresolved concerns stemming from the individual’s falsifications and diagnosis of alcohol dependence, I agree with the local security office that there is evidence that raises a substantial doubt regarding his eligibility for a security clearance, and I do not find sufficient evidence in the record that resolves this doubt. Therefore, because I cannot conclude that granting the individual access authorization would not endanger the common defense and security and would be clearly consistent with the national interest, it is my opinion that the individual should not be granted access authorization. 10 C.F.R. § 710.27(a). The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: April 21, 2003